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Attorneys for Defendant Todd Michael Capser

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

THIRD EYE CAPITAL)	Cause No. CV-19-00038-SPW-TJC
CORPORATION,)	
)	
Plaintiff,)	
)	
vs.)	DEFENDANT TODD MICHAEL
)	CAPSER'S PRELIMINARY
TODD MICHAEL CAPSER;)	PRETRIAL STATEMENT
EDWARD MICHAEL CAPSER; and)	
JOHN DOES 1-5,)	
)	
Defendants.)	

* * * * *

Pursuant to Rule 26(a)(1)(A), F.C.Civ.P., Defendant Todd Michael Capser,
provides his Preliminary Pretrial Statement as set forth below.

1. BRIEF FACTUAL OUTLINE OF THE CASE.
L.R. 16.2(B)(1)(A)

Todd Michael Capser hereinafter, "Todd," financed two large ocean going

vessels through Third Eye Capital Corporation (the “Bank”). As additional collateral, he pledged financial assets which actually did not exist. For this much conduct, Todd has already pled guilty to federal crimes in the Southern District of New York, and awaits sentencing. The ships’ location and current ownership are unknown and will be an object of discovery.

2. JURISDICTION AND VENUE.
L.R. 16.2 (b)(1)(B)

Jurisdiction is proper pursuant to 28 U.S.C., §1332, and, perhaps, the Jones Act and the laws of admiralty.

A. SUBJECT MATTER JURISDICTION.

Jurisdiction is proper in this Court pursuant to 28 U.S.C., § 1332 and, perhaps, the Ship Mortgage Act.

B. VENUE.

There are no issues about venue.

C. PERSONAL JURISDICTION/SERVICE OF PROCESS.

There are no issues about personal jurisdiction or service of process.

3. FACTUAL AND LEGAL BASIS FOR EACH CLAIM.
L.R. 16.2(B)(1)(C) and (D)

At this juncture, Todd has admitted all material allegations in the case and has reserved the right to adjudicate two related issues.

The Plaintiff Bank has kept and maintained ownership or possession of the ships, rented out the ships, and has treated itself as the owner of the ships, as near as Todd can figure out from public records. As such, the Plaintiff Bank may have waived its right for further deficiencies or deficiency judgment. The rights and liabilities of the parties may be governed by the Ship Mortgage Act, 1920, § 30, Subsecs. K, N(a), 46 U.S.C.A. §§ 951, 954(a); 28 U.S.C.A. §§ 2001, 2004.

4. COMPUTATION OF DAMAGES.

L.R. 16.2(b)(1)(E)

Not applicable.

5. RELATED LITIGATION.

L.R. 16.2(b)(1)(F)

A. *U.S. v. Todd Capser*, Case No. 1:19-CR-00337-UA-1, U.S. District Court, for the Southern District of New York, (District of Montana Case No. MJ-19-40-BLG-TJC).

6. PROPOSED STIPULATIONS: CHOICE OF LAW.

L.R. 16.2(b)(1)(G)

A. PROPOSED STIPULATIONS OF FACT.

The parties have set forth their agreed-to stipulations of fact in a separate filing.

B. CHOICE OF LAW.

Montana law should govern this proceeding; however, the Ship Mortgage

Act may play a part.

7. **PROPOSED DEADLINES RE: JOINDER
OF PARTIES AND AMENDMENTS.**

L.R. 16.2(b)(1)(H)

Set forth in joint filing.

8. **CONTROLLING ISSUES OF LAW SUITABLE
FOR PRETRIAL DISPOSITION.**

L.R. 16.2(b)(1)(I)

None.

9. **INDIVIDUALS KNOWN OR BELIEVED
TO HAVE INFORMATION.**

L.R. 16.2(b)(1)(J)

Defendant Todd Capser believes that the following persons are likely to have knowledge of discoverable information which he may use to support his claims:

A. Andrew Wettern: Attorney who represented Wayfare and Defendant Todd Capser in the acquisition of Wayfare's vessels and charter contract.

London Work Tel: +44 20 3096 5150

London Mobile: +44 7785 701011

Email: andrew@wettern.co.uk

B. Toby English: Shipbroker with Affinity Shipbrokers who represented Wayfare and Defendant odd Capser in the acquisition of Wayfare's vessels and charter contract.

London Work Tel: +44 20 3142 0123

London Mobile: +44 7720 821652

Email: toby.english@affinityship.com

10. SUBSTANCE OF INSURANCE AGREEMENT THAT MAY COVER RESULTING JUDGMENT.

L.R. 16.2(b)(1)(K)

None.

11. SETTLEMENT DISCUSSIONS AND PROSPECTS FOR COMPROMISE OF THE CASE.

L.R. 16.2(b)(1)(L)

There have been no settlement discussions but settlement is always the preferable alternative.

12. SUITABILITY OF SPECIAL PROCEDURES.

L.R. 16.2 (b)(1)(M)

Not applicable.

DATED this 17th day of October, 2019.

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/s/ *Mark D. Parker*

By:

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